

**The Virtual Financial Assets
Framework: Non-Fungible Tokens**
GUIDELINES

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REVISIONS LOG

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PREAMBLE

1. Following the recent emergence of Non-Fungible Tokens ('NFTs') in the crypto-asset markets, the MFSA issued a [Consultation](#) relating to NFTs with a view to clarifying the regulatory treatment of these types of DLT-based tokens in the context of the Virtual Financial Assets ('VFA') Framework.
2. NFTs can take numerous forms and functions with their main distinguishing features being their uniqueness and non-fungibility with other DLT Assets. The various NFT use-cases include inter alia digital collectibles, artworks, tokenised product guarantees and real estate, provided that each token or the product or service represented by it are also unique and non-fungible.
3. While NFTs can be traded and accumulated speculatively, they are not readily interchangeable and the relative value of one such crypto-asset in relation to another, each being unique, cannot be ascertained by means of comparison to an existing market or equivalent asset. Such features limit the extent to which these tokens can have a financial use, thus limiting risks to holders and the financial system.
4. In the context of the Virtual Financial Assets Act (Cap. 590) ('the Act'), a Virtual Financial Asset is defined as "any form of digital medium recordation that is used as a digital medium of exchange, unit of account, or store of value and that is not –
 - (a) electronic money;
 - (b) a financial instrument; or
 - (c) a virtual token;"
5. For the reasons outlined in paragraph 3, the Authority considers that NFTs and their features would limit their intended use as a means of exchange, store of value or unit of account, thereby excluding them from the scope of the VFA definition and framework. Nevertheless, the Authority notes that in some cases or forms, NFTs might also fall in other categories of DLT Assets, including financial instruments.
6. To this end, these guidelines, which are largely influenced by the treatment being adopted in terms of the [Markets in Crypto-Assets \('MiCA'\) Regulation](#), identify numerous criteria which can assist stakeholders in determining whether their NFT and activities carried out in relation thereto might fall within scope of the VFA Framework, or another financial services regulatory framework.

7. The exclusion of NFTs from the scope of financial services frameworks based on the criteria outlined in these guidelines is without prejudice to other legislation which may be applicable to NFT-related activities, including anti-money laundering and terrorism financing legislation.

Section 1 Scope and Application

- G1-1 These Guidelines to the VFA Framework on Non-Fungible Tokens seek to clarify the regulatory treatment of these assets in terms of whether they qualify as a DLT Asset in accordance with the definition provided under Article 2(2) of the Act.
- G1-2 These Guidelines shall be applicable to:
- i. issuers offering assets which have been labelled as *'Non-Fungible Tokens'* to the public in or from within Malta; and
 - ii. persons providing any service and/or performing any activity in relation to assets which have been labelled as *'Non-Fungible Tokens'*.
- G1-3 These Guidelines should be followed prior to the application of the [Financial Instrument Test](#) which is utilised to establish the regulatory classification of DLT Assets.

Section 2 Definitions

- G2-1 Unless otherwise specified, terms used in these Guidelines shall have the same meaning assigned to them under the Act as well as Regulations, Rules and Guidance issued thereunder.

**'Distributed Ledger Technology Asset' or
'DLT Asset'**

means - (a) a virtual token; (b) a virtual financial asset; (c) electronic money; or (d) a financial instrument, that is intrinsically dependent on, or utilises, Distributed Ledger Technology.

'Financial Instrument'

shall have the same meaning assigned to it under the Second Schedule to the Investment Services Act, whether or not issued in Malta.

'Non-Fungible Token' or 'NFT'

for the purposes of these Guidelines, refers to a crypto-asset which is considered unique and not fungible with other crypto-assets within the parameters of these Guidelines.

'Virtual Financial Asset' or 'VFA' means any form of digital medium recordation that is used as a digital medium of exchange, unit of account, or store of value and that is not (a) electronic money; (b) a financial instrument; or (c) a virtual token.

Section 3 Review

G3-1 These Guidelines will be updated from time to time, in line with the developments under (i) the Markets in Crypto-Assets Regulation; (ii) Maltese legislation and market trends observed by the Authority.

Section 4 Date of Application

G4-1 These Guidelines shall apply from 1 July 2023.

Section 5 General Considerations

G5-1 NFTs which have been determined not to qualify as DLT Assets following these Guidelines will not be subject to the Act.

G5-2 Where an asset meets the criteria set out in G6-1 qualifying it as a NFT, its inherent features are considered to limit the extent to which it can be used as a medium of exchange, unit of account or store of value, excluding the NFT from the scope of the VFA definition.

G5-3 Nevertheless, where a NFT meets the exclusion criteria set out in G6-2 to G6-4, this may have other DLT Asset implications, and the regulatory classification of such assets should be determined using the Financial Instrument Test in line with the [Guidance Note to the Financial Instrument Test](#).

G5-4 In the determination of a NFT, a substance-over-form should be adopted, in line with the approach adopted within the context of the Guidance Note to the Financial Instrument Test.

Section 6 Criteria to qualify as a NFT

General

G6-1 A NFT should be considered unique and not fungible where the NFT is unique and not fungible with other assets and the underlying asset/s, right/s and/or utility/ies represented by the NFT are also unique and not fungible.

Further Considerations

G6-2 Pursuant to G6-1:

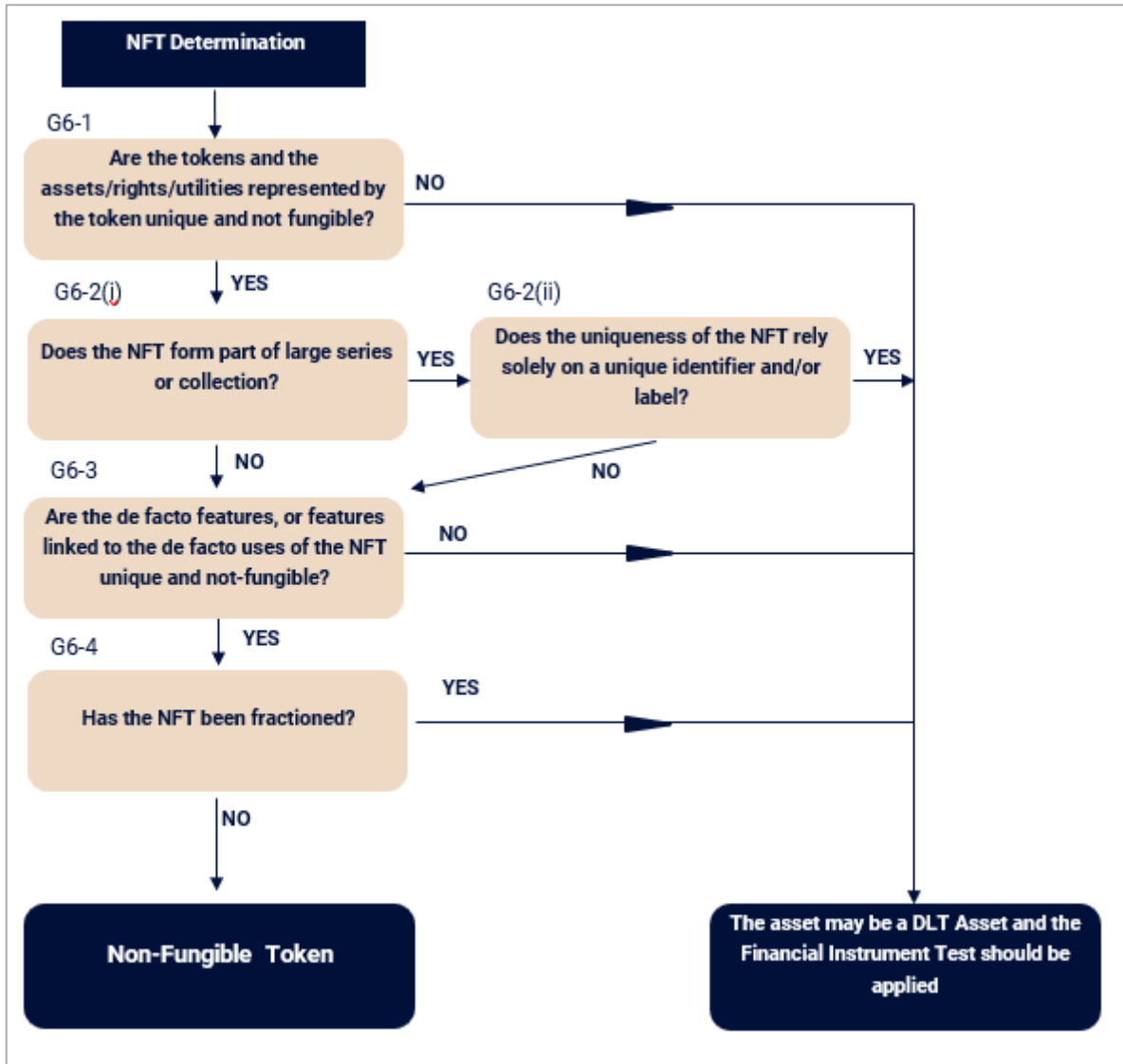
- i. The issuance of a NFT in a large series or collection should be considered to impact the fungibility of the NFT and may result in such asset not being considered as non-fungible.
- ii. The sole attribution of a unique identifier and/or label to a NFT is not sufficient for it to be considered as unique and non-fungible.

G6-3 A NFT which, *prima facie*, may appear to be unique and not fungible, but whose de facto features or features linked to de facto asset/s, right/s and/or utility/ies are either fungible or not unique, should not be considered unique and non-fungible.

G6-4 For NFTs which have been fractioned, each fractional NFT should not be considered unique and not fungible irrespective of the purpose of the NFT or the fractional NFTs.

G6-5 Pursuant to G6-1 to G6-4, users may refer to Annex I which illustrates a flow chart aimed at facilitating the regulatory classification of NFTs.

ANNEX I – Flowchart for NFT Classification



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